

EXHIBIT 120

Concord, NH

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL INDUSTRY) MDL No. 1456
 AVERAGE WHOLESALE PRICE LITIGATION) Master File No.

-----) 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:)

United States of America ex rel.) Hon. Patti B.

Ven-A-Care of the Florida Keys,) Saris

Inc., et al. v. Dey, Inc., et al.,)

Civil Action No. 05-11084-PBS,) VIDEOTAPED

and United States of America ex) DEPOSITION

rel. Ven-A-Care of the Florida) OF THE NEW

Keys, Inc., et al. v. Boehringer) HAMPSHIRE DEPT.

Ingelheim Corp., et al., Civil) OF HEALTH &

Action No. 07-10248-PBS and United) HUMAN SERVICES

States, ex rel. Ven-A-Care of the) BY LISE C.

Florida Keys v. Abbott) FARRAND

Laboratories, Inc. Civil Action)

Nos. 06-CV-11337 and 07-CV-11618) OCTOBER 28, 2008

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<p>1 MR. HENDERSON: Objection to form.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. KATZ:</p> <p>4 Q. The federal government didn't tell New</p> <p>5 Hampshire exactly how to set its reimbursement</p> <p>6 methodology for prescription drugs, right? They</p> <p>7 gave it some flexibility to come up with its own</p> <p>8 reimbursement methodology, right?</p> <p>9 A. Yes.</p> <p>10 MR. HENDERSON: Objection to form.</p> <p>11 Ma'am, if you could kind of pause just a half a</p> <p>12 second after the question to allow me to make my</p> <p>13 objection, I would be grateful.</p> <p>14 BY MR. KATZ:</p> <p>15 Q. And New Hampshire's been aware that</p> <p>16 different states have used different</p> <p>17 reimbursement methodologies, right?</p> <p>18 MR. HENDERSON: Objection to form.</p> <p>19 THE WITNESS: Correct, each state has</p> <p>20 its own reimbursement methodology.</p> <p>21 BY MR. KATZ:</p> <p>22 Q. And New Hampshire chose one that would</p>	<p>1 BY MR. KATZ:</p> <p>2 Q. From time to time there have been</p> <p>3 proposals and, in fact, implementation of certain</p> <p>4 reductions in reimbursement for prescription</p> <p>5 drugs under the New Hampshire Medicaid program,</p> <p>6 right?</p> <p>7 MR. HENDERSON: Objection.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. KATZ:</p> <p>10 Q. And New Hampshire Medicaid would put</p> <p>11 out notice to providers letting them know that</p> <p>12 they intended to do this, right?</p> <p>13 MR. HENDERSON: Objection.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. KATZ:</p> <p>16 Q. Did New Hampshire Medicaid receive any</p> <p>17 responses in response to those notices from the</p> <p>18 providers?</p> <p>19 A. I don't know.</p> <p>20 Q. Are you aware whether or not any</p> <p>21 providers or provider associations have expressed</p> <p>22 any complaints or disagreement with any proposed</p>
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<p>1 fit its needs, right?</p> <p>2 MR. HENDERSON: Objection.</p> <p>3 MS. WEISSBARD: Objection.</p> <p>4 BY MR. KATZ:</p> <p>5 Q. So that -- let me rephrase. New</p> <p>6 Hampshire chose a reimbursement methodology which</p> <p>7 it believed complied with the federal regulations</p> <p>8 and statutes, right?</p> <p>9 MR. HENDERSON: Objection.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. KATZ:</p> <p>12 Q. And this reimbursement methodology was</p> <p>13 submitted to the federal government in the form</p> <p>14 of a State Plan and, when it was revised, in the</p> <p>15 form of State Plan amendments, right?</p> <p>16 A. Yes.</p> <p>17 Q. And for the entire time you've been at</p> <p>18 New Hampshire Medicaid, the reimbursement</p> <p>19 methodology used by New Hampshire Medicaid was</p> <p>20 always approved by CMS?</p> <p>21 MR. HENDERSON: Objection.</p> <p>22 THE WITNESS: Yes.</p>	<p>1 reimbursement?</p> <p>2 A. Yes.</p> <p>3 Q. Yes, they have?</p> <p>4 A. Yes.</p> <p>5 Q. Let's start with pharmacy associations.</p> <p>6 What pharmacy associations are in New Hampshire?</p> <p>7 MS. WEISSBARD: I'm going to object.</p> <p>8 This isn't general policy questions, and I'm not</p> <p>9 sure unless you can explain to me how it is</p> <p>10 relevant to the documents we turned over. You</p> <p>11 seem like you're going outside the scope of what</p> <p>12 we agreed to.</p> <p>13 MR. KATZ: Just trying to get a big</p> <p>14 picture.</p> <p>15 MS. WEISSBARD: That's not policy. I'm</p> <p>16 going to object. She's not going to answer those</p> <p>17 questions. Move on to something else.</p> <p>18 MR. KATZ: If it comes up in a</p> <p>19 document, we'll come back to it.</p> <p>20 MS. WEISSBARD: Okay. Big picture is</p> <p>21 different than general policy questions.</p> <p>22 MR. BERLIN: I'd like to respond to</p>

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<p style="text-align: right;">Page 94</p> <p>1 Q. As a representative of the state can 2 you testify as to -- 3 A. I did not have anything to do with 4 submitting or preparing State Plan amendments, so 5 I cannot say that, yes, this was submitted with 6 that. I don't know that. 7 Q. Who was the person that was in charge 8 of that? 9 A. We have a policy unit. 10 Q. Who was in charge of the policy unit? 11 Who was in charge of the policy unit in 1996? 12 A. I don't know. 13 Q. Do you know who was in charge of that 14 now? 15 A. Diane Peterson works in the policy unit 16 at this time. And I believe she did then, too, 17 but I don't know that for sure. 18 Q. Did you speak with Ms. Peterson in 19 preparation for this deposition? 20 A. No. 21 Q. Do you know where you got this document 22 from for the production in this case?</p>	<p style="text-align: right;">Page 96</p> <p>1 A. That is what is stated in this 2 document. 3 Q. And so based on that, New Hampshire 4 Medicaid determined that it, too, could have a 5 \$2.50 dispensing fee and that \$2.50 dispensing 6 fee would be reasonable, right? 7 A. That is what is listed in this 8 document. 9 Q. So this reduction doesn't correspond to 10 a study of dispensing costs but rather a survey 11 of the market as to what other third-party payors 12 were paying, right? 13 A. From reading this document, that would 14 be correct. 15 Q. And now let's talk about estimated 16 acquisition costs. And you'll see here that it 17 says Express Scripts recommended a 12 percent 18 discount be applied to the AWP. Right? 19 A. That is what this document states. 20 Q. And this State Plan Amendment proposes 21 reduction from AWP minus 10 percent to AWP minus 22 12 percent, right?</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Attorney Gallo collected all the State 2 Plan information from the policy unit. 3 Q. In any event, the first section is 4 titled "Reasonable Dispensing Fee," right? 5 A. Yes. 6 Q. And the New Hampshire Medicaid program 7 determined that the \$2.50 dispensing fee was 8 reasonable, right? 9 A. That is what this document states. 10 Q. And based on the next three paragraphs, 11 you would agree with me that this determination 12 was based upon dispensing fees of other third- 13 party payors? 14 A. That is what this document says. 15 Q. For instance, it says that 70 percent 16 of Medicaid providers are also involved with 17 Express Scripts, and Express Scripts had a 18 dispensing fee of \$2.50, right? 19 A. That is what is stated in this 20 document. 21 Q. It also says that Blue Cross/Blue 22 Shield had \$2.50 dispensing fee, right?</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Yes. 2 Q. And so it would be matching what 3 Express Scripts was doing, right? 4 A. That is what is listed in this 5 document. 6 Q. And the Blue Cross/Blue Shield plan was 7 using a 13 percent discount, right? 8 A. That's what this document states. 9 Q. And so based upon what Express Scripts 10 and Blue Cross/Blue Shield were doing, New 11 Hampshire Medicaid determined that it would be 12 reasonable to apply a 12 percent discount to AWP, 13 right? 14 A. That's what's stated in this document. 15 Q. So you would agree with me that the 16 basis for changing the discount off of AWP at 12 17 percent is not based on a survey of providers 18 acquisition costs but rather a survey of other 19 third-party payors and what they were applying to 20 AWP, right? 21 A. Yes. 22 Q. And you'll see that in paragraph 3 of</p>

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<p>1 right?</p> <p>2 A. That's what's listed in this document.</p> <p>3 Q. It is not based on a study that was</p> <p>4 performed on dispensing costs, right?</p> <p>5 A. That's not mentioned here.</p> <p>6 Q. Rather, New Hampshire Medicaid was</p> <p>7 using a survey of the market of other third-party</p> <p>8 payors, right?</p> <p>9 A. That is what's stated here.</p> <p>10 Q. And the same is true for Estimated</p> <p>11 Acquisition Costs in that New Hampshire Medicaid</p> <p>12 reviewed what other third-party payors were</p> <p>13 applying as a discount to the AWP, right?</p> <p>14 A. That's what's listed here.</p> <p>15 Q. And it -- it states that -- well, that</p> <p>16 these discounts varied from 12 to 16 percent?</p> <p>17 A. Yes.</p> <p>18 Q. And so based upon what other third-</p> <p>19 party payors were doing, New Hampshire Medicaid</p> <p>20 determined that a 16 percent discount off of AWP</p> <p>21 was reasonable; is that right?</p> <p>22 A. That is what is stated here.</p>	<p>1 Exhibit 86. Have you had a chance to look at it?</p> <p>2 A. Yes, I have.</p> <p>3 Q. Tell me what this is.</p> <p>4 A. It is a letter to the commissioner from</p> <p>5 CMS stating that the State Plan Amendment has not</p> <p>6 been approved.</p> <p>7 Q. Do you recall receiving -- do you</p> <p>8 recall New Hampshire Medicaid receiving this</p> <p>9 letter in June of 2004?</p> <p>10 A. No.</p> <p>11 Q. Does this refresh your recollection</p> <p>12 that this State Plan Amendment was denied by CMS?</p> <p>13 A. As I stated before, I had nothing to do</p> <p>14 with State Plan amendments, so I would not be</p> <p>15 familiar with this.</p> <p>16 Q. Now the letter states that the New</p> <p>17 Hampshire Medicaid, like every other state</p> <p>18 Medicaid program, is required to give notice to</p> <p>19 the providers prior to implementing a</p> <p>20 reimbursement methodology change, right?</p> <p>21 A. Yes.</p> <p>22 Q. And you're familiar with that</p>
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<p>1 Q. And it wasn't based on a survey of the</p> <p>2 acquisition costs of providers for purchasing</p> <p>3 drugs, right?</p> <p>4 A. That's not mentioned here.</p> <p>5 Q. Now I have a feeling you're not going</p> <p>6 to know the answer to this question, but I will</p> <p>7 be able to help you with a document.</p> <p>8 Do you know whether or not the State</p> <p>9 Plan Amendment was approved by CMS?</p> <p>10 A. I don't know.</p> <p>11 Q. Why don't we take a break? We have to</p> <p>12 change tapes. We don't have to go anywhere.</p> <p>13 Won't take long.</p> <p>14 VIDEOGRAPHER: Time is 11:11. We are</p> <p>15 off the record.</p> <p>16 VIDEOGRAPHER: Time is 11:13. This is</p> <p>17 beginning of cassette number 2. We are on the</p> <p>18 record.</p> <p>19 (Exhibit Dey 086 marked for</p> <p>20 identification.)</p> <p>21 BY MR. KATZ:</p> <p>22 Q. I've handed you a document marked Dey</p>	<p>1 requirement?</p> <p>2 A. Yes.</p> <p>3 Q. And it states in this letter that these</p> <p>4 methods and procedures may be necessary to assure</p> <p>5 that payments are consistent with efficiency --</p> <p>6 strike that.</p> <p>7 This letter states that these methods</p> <p>8 and procedures as may be necessary to assure that</p> <p>9 payments are consistent with efficiency, economy,</p> <p>10 quality of care, right?</p> <p>11 A. That's what this letter states.</p> <p>12 Q. So the notice requirements, do you</p> <p>13 understand how the notice requirements achieve</p> <p>14 the goal of efficiency, economy and quality of</p> <p>15 care?</p> <p>16 A. A notice requirement meets that?</p> <p>17 Q. Do you understand why that sentence is</p> <p>18 in this letter?</p> <p>19 A. No.</p> <p>20 Q. Well, you understand that -- well,</p> <p>21 we'll take a step back.</p> <p>22 New Hampshire Medicaid was obligated to</p>

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<p>1 give notice to the providers before making 2 reimbursement change, correct? 3 A. Yes. 4 Q. And that gave providers the opportunity 5 to express concerns, if it had any, about the 6 reimbursement change, right? 7 A. Yes. 8 Q. And one of those concerns could be the 9 reimbursement cut is too low and I'm not going to 10 be able to participate in the Medicaid program if 11 you cut reimbursement down low. That's a 12 possible concern, right? 13 A. That could be. 14 Q. If every single pharmacy in New 15 Hampshire stated that they would drop out of the 16 Medicaid program if the reimbursement change was 17 implemented, that would be a big concern for New 18 Hampshire Medicaid because they would have a 19 problem getting prescription drugs to Medicaid 20 beneficiaries, right? 21 A. That could be. 22 Q. And so when it talks about -- when this</p>	<p>1 are because you have -- 2 A. Out-of-state. 3 Q. Pharmacies out of state in all those 4 Medicaid providers, right? 5 A. Yes. 6 Q. And it is important to have as many 7 pharmacies as possible participating in the 8 Medicaid program so that Medicaid beneficiaries 9 have access to drugs regardless of where they are 10 in the state, right? 11 MR. HENDERSON: Objection. 12 THE WITNESS: Yes. 13 BY MR. KATZ: 14 Q. Now you see that the State Plan 15 Amendment is denying the reimbursement change, 16 right? 17 MR. HENDERSON: Objection to the 18 characterization. 19 THE WITNESS: The State Plan Amendment. 20 BY MR. KATZ: 21 Q. I'm sorry. Withdraw that question. 22 You see that this letter from U.S. Health and</p>
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<p>1 letter refers to the federal statute talking 2 about quality of care, you would agree with me 3 that access to care would be a factor in quality 4 of care, right? 5 A. Yes. 6 Q. And so that's one reason why that 7 sentence could be in that letter, right? Do you 8 understand that? 9 A. Yes. 10 Q. How many pharmacies are there in New 11 Hampshire? 12 A. Enrolled -- well, Medicaid provider 13 pharmacies or -- 14 Q. That was going to be my next question. 15 So do you know how many pharmacies are enrolled 16 as Medicaid providers in New Hampshire? 17 A. There are out-of-state that are also 18 enrolled and we have enrollment of about 390. 19 Q. And do you know how many total 20 pharmacies there are in New Hampshire? 21 A. Probably about that, 360, 370. 22 Q. Okay. And then the excess pharmacies</p>	<p>1 Human Services is denying New Hampshire 2 Medicaid's State Plan Amendment, right? 3 A. Yes. 4 Q. What is the current reimbursement 5 methodology in New Hampshire? 6 A. AWP minus 16 percent. It is the lesser 7 of. 8 Q. When was that implemented? 9 A. I don't remember. 10 (Exhibit Dey 087 marked for 11 identification.) 12 Q. Handed you a document marked Exhibit 13 87. I see that the date on the bottom is 14 10/8/2008. And my understanding was that this 15 was the current regulation; is that correct? 16 A. I believe so because that would be the 17 date that this was printed off of the website. 18 Q. That would be the New Hampshire 19 website? 20 A. Yes, General Court. 21 Q. Do you know who printed this off? 22 A. No.</p>

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<p style="text-align: right;">Page 282</p> <p>1 from 1990 to the present when some court order or</p> <p>2 budget condition or some other reason existed</p> <p>3 causing the department to not follow the</p> <p>4 reimbursement methodology that we've seen</p> <p>5 described in the exhibits today?</p> <p>6 A. No.</p> <p>7 Q. Does First Health to your knowledge</p> <p>8 investigate the published drug pricing</p> <p>9 information for accuracy?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. Have they ever to your knowledge?</p> <p>12 A. I don't know.</p> <p>13 Q. Likewise, do you have any information</p> <p>14 to indicate that EDS investigated the accuracy of</p> <p>15 the published prices?</p> <p>16 MR. KATZ: Objection to form.</p> <p>17 THE WITNESS: No. No.</p> <p>18 BY MR. HENDERSON:</p> <p>19 Q. Do you or other persons in your</p> <p>20 department have time to investigate the accuracy</p> <p>21 of published drug prices?</p> <p>22 MR. KATZ: Objection, form.</p>	<p style="text-align: right;">Page 284</p> <p>1 BY MR. HENDERSON:</p> <p>2 Q. Let me repeat the question. If average</p> <p>3 wholesale prices had no relation whatsoever to</p> <p>4 real prices, in your opinion would those types of</p> <p>5 prices be useful for purposes of reimbursement?</p> <p>6 MR. KATZ: Objection, form.</p> <p>7 THE WITNESS: You're asking my opinion.</p> <p>8 No, it wouldn't be in my opinion.</p> <p>9 BY MR. HENDERSON:</p> <p>10 Q. Why not?</p> <p>11 A. You need to --</p> <p>12 MR. BERLIN: Same objection.</p> <p>13 BY MR. HENDERSON:</p> <p>14 Q. He's objecting.</p> <p>15 A. Okay. You need to be able to depend</p> <p>16 upon the validity of your information that you're</p> <p>17 basing reimbursement on.</p> <p>18 Q. And if AWP's had no relation to real</p> <p>19 prices, they wouldn't reflect any acquisition</p> <p>20 cost at all; is that fair to say?</p> <p>21 MR. KATZ: Objection to form.</p> <p>22 THE WITNESS: Not accurately.</p>
<p style="text-align: right;">Page 283</p> <p>1 THE WITNESS: No.</p> <p>2 BY MR. HENDERSON:</p> <p>3 Q. Would it be difficult to do that given</p> <p>4 the number of NDCs that are covered by your</p> <p>5 agency's program?</p> <p>6 MR. KATZ: Objection, form.</p> <p>7 THE WITNESS: Yes, it would be</p> <p>8 difficult.</p> <p>9 BY MR. HENDERSON:</p> <p>10 Q. Ms. Farrand, if the prices that</p> <p>11 manufacturers reported to First Data Bank and</p> <p>12 that were published had no relation at all to</p> <p>13 real market prices, would it be appropriate to</p> <p>14 use that in your view, that type of information</p> <p>15 for reimbursing for drugs?</p> <p>16 MR. KATZ: Objection to form.</p> <p>17 BY MR. HENDERSON:</p> <p>18 Q. Would it be a useful source of</p> <p>19 information?</p> <p>20 MR. BERLIN: Same objection.</p> <p>21 THE WITNESS: Repeat your question,</p> <p>22 please.</p>	<p style="text-align: right;">Page 285</p> <p>1 BY MR. HENDERSON:</p> <p>2 Q. And if average wholesale prices were</p> <p>3 simply random numbers with no predictable</p> <p>4 relationship to actual prices, would the First</p> <p>5 Data Bank AWP's be of any value in determining</p> <p>6 reimbursement in your opinion?</p> <p>7 MR. KATZ: Objection, form.</p> <p>8 THE WITNESS: In my opinion, no.</p> <p>9 BY MR. HENDERSON:</p> <p>10 Q. Would it be practical for Health and</p> <p>11 Human Services to not use published prices but</p> <p>12 instead rely entirely on surveys that its</p> <p>13 auditors conducted to try to determine actual</p> <p>14 acquisition costs that pharmacists paid for their</p> <p>15 drugs?</p> <p>16 MR. KATZ: Objection, form.</p> <p>17 BY MR. HENDERSON:</p> <p>18 Q. Would that be a practical way of</p> <p>19 determining reimbursement?</p> <p>20 MR. KATZ: Objection, form.</p> <p>21 THE WITNESS: Not with the amount of</p> <p>22 manpower that we presently have.</p>

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<p style="text-align: right;">Page 286</p> <p>1 BY MR. HENDERSON:</p> <p>2 Q. And, okay.</p> <p>3 A. And since there is a hiring freeze,</p> <p>4 there won't be any more manpower coming into the</p> <p>5 department to be able to do any extra surveys</p> <p>6 like that.</p> <p>7 Q. Would surveys have -- in order to rely</p> <p>8 on surveys entirely for purposes of determining</p> <p>9 an estimate of acquisition costs, would surveys</p> <p>10 have to be done frequently or infrequently in</p> <p>11 your opinion?</p> <p>12 MR. KATZ: Objection, form.</p> <p>13 THE WITNESS: Probably at least</p> <p>14 quarterly.</p> <p>15 BY MR. HENDERSON:</p> <p>16 Q. And by the time the survey data were</p> <p>17 compiled and evaluated, would it be still up to</p> <p>18 date with current prices?</p> <p>19 MR. KATZ: Objection, form.</p> <p>20 THE WITNESS: It would still have a lag</p> <p>21 time.</p> <p>22 BY MR. HENDERSON:</p>	<p style="text-align: right;">Page 288</p> <p>1 THE WITNESS: No.</p> <p>2 BY MR. HENDERSON:</p> <p>3 Q. Have you ever yourself personally</p> <p>4 reviewed it?</p> <p>5 A. No.</p> <p>6 Q. The URA information, do you understand</p> <p>7 that it is submitted for the Medicaid rebate</p> <p>8 program; is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. Does your agency ever use it for</p> <p>11 purposes of determining reimbursement?</p> <p>12 MR. KATZ: Objection, form.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MR. HENDERSON:</p> <p>15 Q. Do you have an understanding as to</p> <p>16 whether or not -- let me back up.</p> <p>17 Mr. Katz asked you some questions about</p> <p>18 whether it is possible to sort of reverse</p> <p>19 engineer and calculate, using URA numbers, to</p> <p>20 calculate the Average Manufacturer Price?</p> <p>21 MR. KATZ: Objection, form.</p> <p>22 BY MR. HENDERSON:</p>
<p style="text-align: right;">Page 287</p> <p>1 Q. Mr. Katz asked you some information</p> <p>2 about Average Manufacturer Price data. And this</p> <p>3 information I think you indicated comes in --</p> <p>4 actually it is unit rebate amounts that are</p> <p>5 received by First Health from CMS?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall those questions?</p> <p>8 A. Uh-hum.</p> <p>9 MR. KATZ: Objection to form.</p> <p>10 BY MR. HENDERSON:</p> <p>11 Q. Have department employees such as</p> <p>12 yourselves ever received unit rebate amount data</p> <p>13 from CMS directly?</p> <p>14 MR. KATZ: Objection, form.</p> <p>15 THE WITNESS: No, it goes to the</p> <p>16 technical contact which has always been whatever</p> <p>17 fiscal agent or First Health that has handled the</p> <p>18 rebate.</p> <p>19 BY MR. HENDERSON:</p> <p>20 Q. Do you or any other department employee</p> <p>21 ever regularly review that URA information?</p> <p>22 MR. KATZ: Objection, form.</p>	<p style="text-align: right;">Page 289</p> <p>1 Q. Have you ever done that?</p> <p>2 A. No.</p> <p>3 Q. To your knowledge, has any employee in</p> <p>4 your agency ever done that?</p> <p>5 A. No.</p> <p>6 Q. Do you have any understanding as to</p> <p>7 whether or not the Average Manufacturer Prices</p> <p>8 that manufacturers report to CMS, whether or not</p> <p>9 those prices are to be considered confidential in</p> <p>10 any way?</p> <p>11 A. All the rebate information I believe is</p> <p>12 confidential.</p> <p>13 Q. Do you have any understanding whether</p> <p>14 or not that might prohibit you from using Average</p> <p>15 Manufacturer Price as a basis for determining</p> <p>16 estimated acquisition costs?</p> <p>17 MR. KATZ: Objection, form.</p> <p>18 THE WITNESS: I don't believe we can.</p> <p>19 I'm not sure.</p> <p>20 BY MR. HENDERSON:</p> <p>21 Q. Just to clarify, do I understand that</p> <p>22 you don't believe you're permitted to use --</p>

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<p>1 A. Yes.</p> <p>2 Q. -- AMP information for purposes of</p> <p>3 determining reimbursement?</p> <p>4 A. Yes.</p> <p>5 Q. I'd like to ask you to look at Dey</p> <p>6 Exhibit 95, if you can find it, and also Dey</p> <p>7 Exhibit 96. Do you have those in front of you?</p> <p>8 A. Yes.</p> <p>9 Q. Now Dey Exhibit 95 appears, appears to</p> <p>10 have been produced by the state of New Hampshire</p> <p>11 according to the numbering in the lower right-</p> <p>12 hand corner. If you look at this, do you see</p> <p>13 there are some parts of this that refer to a</p> <p>14 Supplemental Rebate Agreement? And let me back</p> <p>15 up.</p> <p>16 Did the state of New Hampshire begin to</p> <p>17 implement a so-called Supplemental Rebate Program</p> <p>18 sometime in 2004?</p> <p>19 A. Yes, we developed a preferred drug</p> <p>20 list, and the preferred drug list products are</p> <p>21 what gives us the supplemental rebate for the</p> <p>22 most part.</p>	<p>1 A. I believe that this Exhibit A is the</p> <p>2 actual supplemental agreement.</p> <p>3 Q. Let's see what page you're referring</p> <p>4 to.</p> <p>5 A. NH 00102. Wait a minute, maybe not.</p> <p>6 Q. It says "participating state</p> <p>7 amendment."</p> <p>8 A. You want the agreement between the</p> <p>9 manufacturer and the state?</p> <p>10 Q. As I look at this, it has some</p> <p>11 amendments to the Supplemental Rebate Agreement,</p> <p>12 but it does not have the entirety of the</p> <p>13 Supplemental Rebate Agreement itself.</p> <p>14 A. Amendments are done whenever another</p> <p>15 manufacturer joins. I don't know where the</p> <p>16 original agreement lies.</p> <p>17 Q. Okay. Now, if you turn to page 96,</p> <p>18 Bates stamped 96 in the lower right-hand corner?</p> <p>19 A. Yes.</p> <p>20 Q. This is part of the approved</p> <p>21 supplemental, I'm sorry, this is part of the</p> <p>22 approved State Plan Amendment that describes the</p>
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<p>1 Q. And do you understand that just in</p> <p>2 general, the agreement provides that in return</p> <p>3 for -- that if a manufacturer pays a supplemental</p> <p>4 rebate on a particular drug, in return the state</p> <p>5 will put that drug on the preferred drug list?</p> <p>6 Is that part of the, part of the deal, so to</p> <p>7 speak?</p> <p>8 A. It is part of the deal. You can still</p> <p>9 put prior authorization requirements -- you can</p> <p>10 still put utilization management tools on a drug</p> <p>11 even if the manufacturer does participate in the</p> <p>12 supplemental.</p> <p>13 Q. Okay. But at least in some sense, if</p> <p>14 the manufacturer pays a supplemental rebate, some</p> <p>15 preference will be given to that manufacturer's</p> <p>16 drug?</p> <p>17 A. It could be.</p> <p>18 Q. Now, this Exhibit 95 includes some</p> <p>19 amendments to the Supplemental Rebate Agreement,</p> <p>20 but I don't see the Supplemental Rebate Agreement</p> <p>21 itself in its entirety in this exhibit. Have I</p> <p>22 described the exhibit in that fashion accurately?</p>	<p>1 Supplemental Rebate Agreement. And is it your</p> <p>2 understanding that the state of New Hampshire</p> <p>3 received approval for its -- from the federal</p> <p>4 government for its Supplemental Rebate Agreement?</p> <p>5 A. Yes.</p> <p>6 Q. Could you read aloud the last bullet</p> <p>7 point on this page 96?</p> <p>8 A. "The unit rebate amount is confidential</p> <p>9 and it cannot be disclosed in accordance with</p> <p>10 Section 1927(b)(3)(d) of the Social Security</p> <p>11 Act."</p> <p>12 Q. And is that consistent with your</p> <p>13 understanding of unit rebate amounts, whether or</p> <p>14 not they pertain to a supplemental rebate or</p> <p>15 whether or not they pertain to the national</p> <p>16 rebate agreement?</p> <p>17 A. Yes, it is.</p> <p>18 Q. And looking at Exhibit 96, Dey Exhibit</p> <p>19 96, do you know whether or not Health and Human</p> <p>20 Services employees receive these executed copies</p> <p>21 that have been executed by the manufacturers?</p> <p>22 A. I believe the commissioner has to sign</p>

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